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IN THE

Supreme Court of the United States

.....Term, 1973

No. 73-675

JAMES A. RUTH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above case on September 20, 1973 which affirmed the District Court's denial of Petitioner's Motion for a New Trial.

Opinions Below

The District Court for the Western District of Pennsylvania denied Petitioner's Motion for New Trial by opinion (Appendix pp. 7-9). The Third Circuit Court of Appeals affirmed by order (Appendix pp. 10-11).

Jurisdiction

The jurisidction of this Court is invoked under 28 U. S. C. 1254 (1).

Questions Presented

Can a defendant stand convicted on an indictment charging him with forcing his employer to pay wages for "imposed, unwanted and superfluous "services" in violation of the Hobbs Act, 18 U. S. C. 1951 where the Trial Court:

1. Charged the jury, over objection, "it is not proper to obtain a labor objective by force, violence, or fear";

2. Charged "there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through threats of force or violence";

3. And specifically refused after request of defense counsel to define "wrongful" conduct as used in the Hobbs Act in accordance with the holding of *U. S. v. Caldes,* 457 F2d 74 (9th Cir. 1972), approved by this Court in *U. S. v. Enmons,* 409 U. S. 946, 93 S. Ct. 1007 (1973), or that violence perpetrated in the name of a legal labor objective is not wrongful conduct within the meaning of Hobbs.

Statement

Petitioner was convicted after a jury trial on a single count of a multiple count indictment charging him, and two others, with conspiracy to violate the Hobbs Act, by extorting wages for Ironworkers, and as to the Petitioner, in two other substantive counts for attempting to extort wages for Ironworkers in violation of the Hobbs Act. Petitioner was a Job Foreman and a member of Local 348 of the International Association of Bridge, Structural and Ornamental Ironworkers Union, AFL-CIO, in the construction

of the Pennzoil Oil Refinery at Rouseville, Pennsylvania during part of the period alleged in the indictment from September 1, 1970 through June 14, 1971. The principal contractor on the job and the essential complainant in this matter was Refractory Construction Corporation, of Oklahoma City, Oklahoma, which had no prior experience in Western Pennsylvania in connection with labor jurisdictional claims in the construction of oil refineries. The events alleged in the indictment grew out of the contention by members of Local 348 that certain work, particularly metal scaffolding, was within the jurisdiction of Ironworkers to erect even if used by other crafts. At trial the government attempted to prove that all the Defendants named in the indictment conspired to induce representatives of Refractory Construction Corporation to hire Ironworkers whose work was alleged to be "unnecessary and superfluous", in violation of the Hobbs Act. The other Defendants, all acquitted, were William Knapp, the Business Agent, and Daniel R. Carr, another Job Foreman from Local 348. Petitioner was convicted of a single substantive count which charged him with firing a pistol into the desk of Buddy Raymond, a Refractory Construction Corporation Supervisor, for the purpose of inducing the payment of unwanted wages to other Ironworkers, in violation of of the Hobbs Act. Petitioner was acquitted of all remaining counts against him along with the other Defendants. Fairly characterized the evidence established:

1. That no person for Refractory Contractors, or any other person, was ever physically abused or harmed by any member of Local 348; and

2. That any alleged extortion for wages was not for personal gain by Petitioner, Ruth, or the other Defendants, but for wages of third party Ironworkers.

After the prosecution concluded its case, Petitioner moved to dismiss the action for among other reasons because any alleged violence took place in furtherance of a legal labor objective, *i.e.* Ironworkers jurisdiction over scaffolding as set forth in its contract, which if true, under the holding of *Caldes v. U. S.*, 457 F2d 74 (9th Cir. 1972), was not wrongful conduct as defined in Hobbs. The Court refused and later charged the jury that "it is not proper to obtain a labor objective by force, violence, or fear" (T.15), and "there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through threats of force or violence" (T. 19). Counsel specifically excepted and asked the Court to charge that conduct, even if violent, is not wrongful as Hobbs requires it to be for conviction, if the violence is perpetrated for a legal labor objective. *Caldes v. U. S., supra.* In refusing, the Trial Court responded "I understand your point. I refuse to go that far." (T. 31).

After his conviction, on the single count, Petitioner was sentenced to one year probation by Judge Gerald Weber and fined Three Hundred ($300.00) Dollars. The Motion for New Trial was denied and an appeal followed to the Third Circuit. After briefing to that Court was complete, this Court's decision in U. S. v. Enmons, 409 U. S. 946, 93 S. Ct. 1007 (1973) was decided on February 22, 1973. Petitioner brought this to the Circuit's attention in support of his contention already briefed that the Hobbs Act does not reach violence perpetrated as part of a plan to achieve a legal labor objective, for which *Caldes v. U. S., supra* had already been cited. After oral argument the Circuit affirmed by order, from which, this Petition followed.

Reasons for Granting the Writ

On the basis of the charge Defendant could have been convicted of conduct which is not a crime under Federal law. Throughout trial and as a request for charge, Defendant contended that low level violence in the furtherance of a legal labor objective was not a federally criminal or punishable act and was not wrongful conduct as defined or contemplated by Congress in the Hobbs Act, and that *U. S. v. Caldes, supra* as held. The District Court refused to follow *Caldes,* stating "I understand your point but refuse to go that far". (T. 31).

This Court in *Enmons, supra* approved the holding in *U. S. v. Caldes,* that violence perpetrated in the furtherance of legal labor objectives is not wrongful conduct within the the meaning of that term as used to define extortion in the Hobbs Act, 18 U. S. C. 1951.

Charging the jury as the Trial Court did, that "it is not proper to obtain a labor objective by force, violence, or fear" (T. 15) and that "there is nothing in Hobbs that protects unions or union people acting under the guise or the apparent pretense of a union contract in attempts to get personal property through threats of force or violence" (T. 19), is patently in contradiction of *Caldes* and as it subsequently turned out, in contradiction of *Enmons.* The Trial Court thus made it impossible to determine whether the verdict was predicated on the possible erroneous jury assumption that all violence, even in the name of a legal labor objective, was wrongful, which *Enmons* and *Caldes* manifestly hold is not the case, or whether the verdict was based on the possible assumption that such violence was for the purpose of obtaining wages, which were imposed, unwanted, and superfluous as charged in the indictment, which

conduct remains a violation of the Hobbs Act. *Enmons, supra, U. S. v. Green,* 350 U. S. 415 (1956), and *U. S. v. Kemble,* 198 F2d 889 (3rd Cir. 1952). Thus, Defendant could plainly have been convicted on conduct not even within federal jurisdiction, and thus not a criminal act under federal law, a circumstance which if true, is obviously in contravention of his constitutional right to due process.

Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

STANLEY W. GREENFIELD,
Attorney for Petitioner.

APPENDIX

Memorandum Opinion

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

JAMES A. RUTH.

Criminal Action No. 72-40.

WEBER, *J.* November 2, 1972

Defendant and two others were indicted on a multi-court indictment under the Hobbs Act [18 U. S. C. 1951]. The first count was a conspiracy count, the remaining counts charged overt acts by various individuals defendants. All defendants were acquitted of the conspiracy count, the other defendants were acquitted of the overt acts charged against them, but the defendant Ruth was found guilty of one count of an overt act.

While all of the acts charged involved the use of strong language to accomplish the alleged extortion, the particular count upon which defendant Ruth was found guilty also involved the display of a hand gun. Defendant's counsel argues that the statute does not apply to "low level" violence. It was argued to the jury that the language used

by all defendants toward their employer was the type of rough talk that is common in the industry and did not constitute wrongful use of actual or threatened force. With respect to the other counts of the indictment the jury apparently agreed with him. The evidence in support of the count on which defendant was found guilty involved the display and firing of the hand gun. Defendant argues that the evidence is insufficient to prove that the use of the hand gun was related to any threats of force, violence or fear directed toward the defendant's employer.

While the evidence does not sustain a finding that the threat of force or violence was effected solely by the use of the hand gun, it is clear that the display of the gun and the demonstration of its firing power by the defendant formed an integral part of the general intimidation which was being exercised by all defendants upon their employer. The evidence amply supports the finding that money in the form of wages for unnecessary or unperformed labor was obtained from the employer by the use of threatened force.

While the jury would not accept the threat of force from words alone, they properly accepted it when the language was accompanied by defendant's display of a deadly weapon in his possession at the time.

Defendant argues that perjured testimony before the grand jury invalidates the indictment. But is was clearly shown that the perjured testimony did not relate to any witness or any facts under the count of the indictment for which defendant Ruth was found guilty. Each count of the indictment stands alone as a separate indictment. *Dunn v. United States*, 284 U. S. 390, [1932].

Memorandum Opinion

We find no basis for defendant's claim of prejudice on a denial of his motion for change of venue, or the composition of the jury, or the failure to sequester the jury.

The court's review of certain testimony at the specific request of the jury was in our opinion well within the permissible area of judicial discretion.

We will, therefore, deny the Motion for New Trial of defendant James A. Ruth.

ORDER

AND NOW, this *2nd day of November, 1972,* upon hearing oral argument and briefs of counsel, it is ORDERED that the motion of Defendant James G. Ruth for New Trial be DENIED.

GERALD J. WEBER,
United States District Judge.

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Judgment Order

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-2094.

UNITED STATES OF AMERICA,

Appellee,

v.

JAMES A. RUTH,

Appellant.

Appeal From the Judgment and Sentence of the United States District Court for the Western District of Pennsylvania at No. 72-40 Criminal.

Submitted Under Third Circuit Rule 12(6) Monday April 9, 1973.

Before: Adams and Gibbons, *Circuit Judges,* and Joseph S. Lord, III, *District Judge.*

Richard L. Thornburgh, United States Attorney, Blair A. Griffith, First Assistant U. S. Attorney, Kathleen Kelly Curtin, Assistant U. S. Attorney, 633 U. S. Post Office & Courthouse, Pittsburgh, Pa. 15219, Attorneys for Appellee.

Greenfield & Minsky, By: Stanley W. Greenfield, 412 Carlton House, Pittsburgh, Pa. 15219, Attorney for Appellant.

Judgment Order

After considering the appellant's contentions' that (1) the evidence did not reflect that the appellant fired a weapon into Raymond's desk for the purpose of extorting money from Raymond in the form of wages or any other thing of value; (2) that the indictment against the appellant was obtained by the use of perjured testimony; (3) that the court erred in giving the jury its personal synopsis of the testimony in response to an inquiry by it, over objection of counsel; and (4) whether the Hobbs Act reaches violence perpetrated as part of a plan to achieve a legal labor objective, we conclude such contentions, on this record, are without merit, and it is

ORDERED AND ADJUDGED that the judgment of the district court is affirmed.

BY THE COURT,
ARTHUR M. ADAMS,
Circuit Court.

Attest:

THOMAS P. FINN,
Clerk.

Dated: Sep. 20, 1973.